

**FILED**  
HARRISBURG, PA

MAY 19 2003

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**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and THERESA M.  
PERKEY,

Plaintiffs

vs.

RELIABLE CARRIERS, INC.,  
DANIEL JOSEPH BEMBEN and KENT,  
Defendants

CIVIL ACTION NO. 1:CV-00-1639

JURY TRIAL DEMANDED

Magistrate Judge Smyser

**BRIEF OF DEFENDANT RELIABLE CARRIERS, INC. AND DANIEL  
JOSEPH BEMBEN IN OPPOSITION TO ABF'S MOTION TO RESPOND TO  
SUMMARY JUDGMENT**

**A. ISSUE**

1. **WHETHER ABF'S MOTION TO RESPOND TO SUMMARY JUDGMENT  
MUST BE DENIED BECAUSE PENNSYLVANIA LAW PRECLUDES ABF  
FROM ASSERTING OR RECOVERING THE AMOUNT OF BENEFITS  
PAID TO THE PLAINTIFFS?**

**[SUGGESTED ANSWER: YES]**

**B. ANALYSIS**

**ABF'S MOTION TO RESPOND TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT MUST BE DENIED BECAUSE  
PENNSYLVANIA LAW PRECLUDES ABF FROM ASSERTING OR  
RECOVERING THE AMOUNT OF BENEFITS PAID TO THE  
PLAINTIFFS.**

ABF asserts that it should be permitted to respond to Defendants' Motion for Summary Judgment. For the reasons stated in Defendants' Brief in Opposition to ABF's Motion to Intervene, which is incorporated herein as if it were more fully set forth at length, ABF's Motion must be denied. Furthermore, Plaintiffs have filed a Brief in Opposition to the Summary

Judgment Motion. There is no need to have ABF respond since Plaintiffs have protected ABF's interest. Also, as was discussed in Defendants' previous Briefs, Pennsylvania Law precludes the recoverability of workermen's compensation benefits in this case.

WHEREFORE, for all of the foregoing reasons, Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, respectfully request that this Honorable Court deny ABF's Motion to Respond to Defendants' Motion for Summary Judgment.

GODFREY & COURTNEY, P.C.

By



E. Ralph Godfrey, Esquire

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Attorneys for Defendants Reliable Carriers, Inc.,  
and Daniel Joseph Bemben

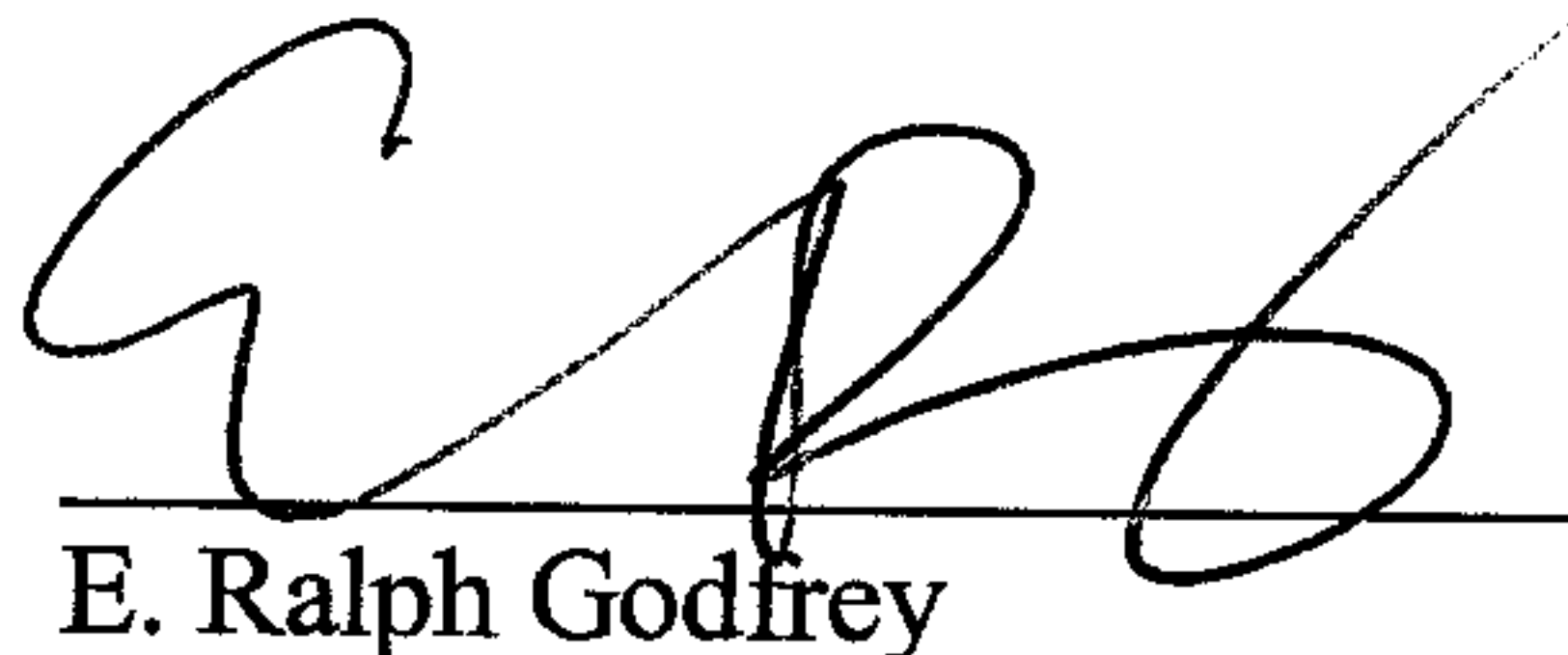
Dated:

**CERTIFICATE OF SERVICE**

AND NOW, this 19 day of May, 2003, I, E. Ralph Godfrey, Esquire, of Godfrey & Courtney, P.C., attorneys for Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben hereby certify that I served the foregoing Brief of Defendants in Opposition to ABF's Motion to Respond to Defendants' Motion for Summary Judgment this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Marcus McKnight, Esquire  
Mark D. Schwartz, Esquire  
Irwin, McKnight & Hughes  
60 West Pomfret Street  
Carlisle, PA 17013

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E. Ralph Godfrey